IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 2981 of 2007(E)

PETITIONER:

M.A.ALEXANDER, S/O.REV.FR.ALEXANDRIOS,
MATTACKAL, VALANJAVATTOM P.O., PATHANAMTHITTA.

BY ADV. SRI.P.HARIDAS

RESPONDENTS:

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1. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA.

2. SUB INSPECTOR OF POLILCE,
PULIKEEZHU.

3. POLLUTION CONTROL BOARD, REPRESETNED BY
ITS SECRETARY, PATHANAMTHITTA.

4. KADAPRA PANCHAYATH,
REPRESETNED BY ITS SECRETARY,
NIRNOM P.O., KADAPRA.

5. PRAMOD.V.JOHN
KODABHAGATHU
VALANJAVATTOM

BY ADV. SRI.V.GIRI FOR R5
SRI.JOSEPH GEORGE (ADV.COMMISSIONER)
GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR FOR R1,R2
ADV.SRI.M.K.CHANDRAMOHANDAS, SC FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No.2981 OF 2007

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Dated this the 16th day of July,2007

JUDGMENT

The prayer in the writ petition is to issue a direction to the first and second respondents to take necessary and effective action to close down the illegal Brick Kiln conducted by the 5th respondent. Case of the petitioner is as follows:

5th respondent is conducting a wire cut brick manufacturing unit without obtaining consent from the Pollution Control Board and without licence from the 4th respondent Panchayat. The same is being conducted without following any standards prescribed under the statutes and it is causing severe pollution in the locality. This is being conducted close to the residential building of the petitioner. It is stated that the brick kiln is not covered on the side. The respondent is dumping mud in the properties and processing the same in open space. Complaints were made. The third respondent Pollution Control Board issued show cause to the 5th respondent vide Ext.P1. The 4th respondent

Panchayat issued notice to the 5th respondent to obtain no objection certificate from the Pollution Control Board and till receipt of such certificate to stop functioning of the unit. But the 5th respondent neglected to act in the matter. Vide Ext.P3, the 4th respondent issued a request to the 2nd respondent - Sub Inspector to take urgent steps to stop the functioning of the unit. 4th respondent issued Ext.P4 show cause. But action could not be taken. Again on 30/10/06, 4th respondent issued Ext.P5 notice restraining the functioning of the Unit. But still, 5th respondent is continuing illegal operations and no action is being taken. Petitioner filed Ext.P6. Petitioner has taken a ground among other grounds that 5th respondent is conducting the unit without proper consent from the Pollution Control Board, under the Water Prevention and Pollution control Act, apart from, ofcourse under the Air Pollution and Control Pollution Act.

2. This court appointed an Advocate Commissioner. In the report submitted by the Commissioner, it is interalia stated as follows:

> *" Whether the fifth respondent's unit is causing pollution in the locality?*

Only two sides of the pug mill are seen enclosed. the sound emanating from the pug mill is bearable. No compound wall is provided. Clay is being piled on the western road side. The kiln is not fully enclosed as directed by the pollution Control Board. There are traces of smoke and soot on the wall on the western side. The eastern side was partially enclosed by using G.I.sheets. <u>The kiln is causing pollution since it is not fully enclosed."</u>

3. The Pollution Control Board in the meantime granted consent to the 5th respondent to operate the unit vide proceedings dated 07-10-2006 subject to the conditions. Still, later the Pollution Control Board has filed a report through Environmental Engineer. Therein, it is interalia stated that even after providing control measures, complaints have been existing against nuisance due to air and noise pollution. There is reference to an inspection. There is also reference to certain control measures being taken by the 5th respondent. It is stated that the unit was further inspected on 24/05/2007 with kiln fired to assess the impact of pollution caused by the unit. During the inspection, it is observed that the petitioner and the nearby residents are still experiencing nuisance due to smoke and

typical smell from the unit as the dispersing facility provided (Exhaust fan) is not sufficient to prevent the spreading of smoke to nearby residential area. The last two paragraphs in the report are also highly relevant which is extracted hereunder:

> *" Though the unit has provided all normal control measures, the problem still exits and it is due to the proximity of residences and prevailing wind direction in that area. Further control measures cannot be introduced in such small brick units.*
>
> *Considering the proximity of residences and prevailing wind direction, shifting of the unit to a less populated area is the only permanent solution for the problem. Being an existing unit, they may be directed to shift the unit to a less populated area in a phased manner."*

4. Additional counter affidavit is filed apparently keeping in mind the report filed by the environmental engineer by the 5th respondent Therein it is interalia pointed out that the persons who reside in close vicinity of the unit have not experienced any effects of pollution and have no objection in the functioning of the unit. There is reference to the consent granted to operate the unit. It is also stated that he has spent considerable money for

putting up remedial measures. It is further stated that as far as the commission report is concerned, the only violation is in condition 7 which requires that the burning of the bricks should be done only in a fully enclosed room. Reliance is placed on the report of the Pollution Control Board to negative the finding rendered by the Advocate Commissioner. There is also reference to the loan taken from State Bank of Travancore for putting up the unit. It is stated that the repayment of the loan is not still over. It is also stated that in case of any suggestion from the third respondent, the 5th respondent will certainly provide the more powerful exhaust fan. It is also stated that the report is malafide as it is given by a relative of the petitioner. It is also stated that infact the brick kiln is in operation only for 10 days during a year and also that 5th respondent has provided all the requisite pollution control measures and that petitioner resides more than 90 metres from the unit. It is also contended by the 5th respondent that the unit has been functioning for the last nearly 30 years.

5. I heard learned counsel for the parties. It is clear that the 5th respondent has obtained a consent to operate the brick

kiln. No doubt, the consent is seen obtained from Pollution Control Board. One of the contentions raised by the learned counsel for the petitioner of course is that there is no consent under the Water Act. But then, I must note the contention of the Pollution Control Board that 5th respondent has been granted consent to operate under the Air Pollution Control Act and there is only pollution from sound and air.

6. Learned counsel for the petitioner submits that the consent to operate granted by the Pollution Control Board is bad as it was given without hearing the petitioner. I am not prepared to ignore the consent issued by the Pollution Control Board merely for the reason that petitioner was not heard. Petitioner has not cared to challenge the same in a manner known to law either before this court or before the appellate forum. As long as it remain unchallenged, I must proceed on the basis that there is consent to operate granted by the Pollution Control Board.

7. However, the very same Pollution Control Board has through its environmental engineer filed its report as directed by this court, the crucial portions of which I have already mentioned in my judgment. Whatever that be, the fact remains that,

undoubtedly, the Engineer has stated that even after providing all normal pollution control measures, there is pollution. It is also stated by the Pollution Control Board that the unit is situated in a residential area. The learned counsel on behalf of the Pollution Control Board fairly concedes after getting instructions that though it is stated in the report that the unit may have to be shifted to a less populated area, it is submitted that there is no power vested in the Pollution Control Board to order shifting of the unit . However, it is submitted that what can be done under law is to issue closure notice to see that the closure notice is implemented. It is submitted that shifting is only a suggestion made by the concerned authority having regard to the pollution persisting in the area.

8. 5th respondent has a case that 5th respondent had licence originally from the Panchayat. The case of the 5th respondent is that after obtaining the consent, the 5th respondent has moved the Panchayat seeking permission and since no order is passed either granting licence or rejecting the same, the 5th respondent must be treated as in possession of a deemed licence. Case of the petitioner is that in the teeth of the direction in

233(a) it is not open to the 5th respondent to contend that he is possessing a deemed licence. In the nature of the direction that I propose to pass, I do not think it necessary to decide this issue as of now. The writ petition shall stand disposed of as follows:

There will be a direction to the 4th respondent Panchayat to consider whether the 5th respondent is functioning lawfully and if it is found that 5th respondent is functioning without the support of the deemed licence as contended by the 5th respondent, effective and prompt steps will be taken by the 4th respondent to see that the 5th respondent does not function. A decision in this regard shall be taken by the 4th respondent within a period of three weeks from the date of receipt of a copy of this judgment. As far as the prayer seeking to close down sought against the third respondent is concerned, as thing stands, the third respondent has issued consent to operate which is valid till 31-12-2008. As long as it stands, it may not be open for me to direct the third respondent to order closure as such. In the light of the report submitted to this court, it will be open to the third respondent to take effective and prompt steps invoking all the powers it has under law to see that the pollution which is referred

to in the report is brought to an end.

(K.M.JOSEPH, JUDGE)

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